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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,930	08/25/2003	Ron Robeniol Legario	6826-195	1597
1059	7590	12/18/2009		
BERESKIN AND PARR LLP/S.E.N.C.R.L., s.r.l.				EXAMINER
40 KING STREET WEST				FELTON, AILEEN BAKER
BOX 401				
TORONTO, ON M5H 3Y2				ART UNIT
CANADA				PAPER NUMBER
				1793
			MAIL DATE	DELIVERY MODE
			12/18/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/646,930	LEGARIO ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	AILEEN FELTON	1793	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 10/9/2009.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 31-36,38-44,46,48,49,51 and 53-56 is/are pending in the application.
  - 4a) Of the above claim(s) 34 and 46 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 31-33,35,36,38-44,48,49,51 and 53-56 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ .  | 6) <input type="checkbox"/> Other: _____ .                        |

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission has been entered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 31 is rejected under 35 U.S.C. 102(b) as being anticipated by Kelley (5527498).

Kelley discloses an ANFO explosive mixed by various methods for use in boreholes that comprises diesel fuel with a surfactant (meets chemical coupling agent) and ammonium nitrate. The oil separation is an inherent property of this composition. As to limitations which are considered to be inherent in a reference, note the case law of In re Ludke, 169 USPQ 563; In re Swinehart, 169 USPQ 226, In re Fitzgerald, 205 USPQ 594; In re Best et al, 195 USPQ 430; and In re Brown, 173 USPQ 685, 688.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 33, 35, 36, 38, 43, 44, 48, 49, 51, 53, and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelley (5527498) as applied to claim 31 above and further in view of Baker (4595430).

Baker teaches that it is known to replace a portion of ammonium nitrate with an additive such as epoxidized soybean oil in an ANFO type blasting composition (col. 8 and Table II).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the epoxidized soybean oil as taught by Baker since Baker suggests that it is a known additive to replace a portion of ammonium nitrate in an ANFO type blasting composition and since Kelley relates to ANFO type blasting composition that use ammonium nitrate.

6. Claims 39-42, 54, and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelley (5527498) in view of Baker (4595430) as applied to claims 31-33, 35, 36, 38, 43, 44, 48, 49, 51, 53, and 56 above, and further in view of Richard et al (6113714)

Richard et al discloses details of ANFO composition with ammonium nitrate particles of size .4-2.4 mm and density from .85-1.05 g/cc (col. 6), diesel fuel (col. 4,

lines 37-48) and is loaded into a borehole where it can remain from 1 hr. to 14 days prior to being detonated (col. 1, lines 25-45).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the ammonium nitrate particles as taught by Richard with the ANFO explosive disclosed by Kelley since Richard suggests that it is known to use particles of this size and density with ANFO explosives and also to load the boreholes a predetermined time prior to detonation in order to allow other holes to be filled prior to detonating.

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claims 31-33, 35, 36, 38-44, 48, 49, 51 and 53-56 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no basis in the specification for the exclusion of "emulsion explosives".

***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to AILEEN FELTON whose telephone number is (571)272-6875. The examiner can normally be reached on M-F 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Aileen Felton/  
Primary Examiner  
Art Unit 1793